**THE MATTER OF ARBITRATION BETWEEN**

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| **Independent School District No. 914 Ulen MN** | ) | **BMS Case No. 15 PA 0666** |
| **"Employer"** | ) | **Issue: Contract Violation** |
| **and** | ) | **Hearing Date: 05-18-2015** |
| **Ulen-Hitterdal Education Association** | ) | **Brief Submission Date: 08-23-2015** |
| **"Exclusive Representative"** | ) | **Award Date: 07-23-2015** |
| | ) | **Anthony R. Orman, Arbitrator** |

**JURISDICTION**

The hearing in this matter was held on May 18, 2015, in Ulen, Minnesota. The parties appeared through their designated representatives. Both parties were afforded a full and fair opportunity to present their case. Exhibits were introduced into the record. The parties agreed to the issues and that they were properly before the Arbitrator. The

parties submitted their statement of the issues and final positions. Post-hearing briefs were submitted on or before June 23, 2015, and thereafter the matter was taken under advisement. The Arbitrator will not seek to publish the award except as provided for under the Bureau of Mediations rules and policies and the Charitable Hospitals Act.

## APPEARANCES

**For the Association:**

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| Nicole Blissenbach | Attorney |
| Brett Maass | Grievant |
| Mark Richardson | Field Representative Education Minnesota |
| Kelly Anderson | Witness |
| Connie Lunde | Witness |

**For the Employer:**

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| Todd Cameron | Superintendent |
| Gary Peterson | School Board Head of Negotiations |

## I. BACKGROUND AND FACTS

1. Brett Maass (here in after referred to as the Grievant) is a Licensed Teacher working for the Independent School District No. 914 (here in after referred to as the Employer). He has been an employee for the six years. The Grievant, in addition to being a mathematics teacher in grades seven through twelve, coaches football and basketball. The Grievant is represented by Ulen-Hitterdal Education Association (here in after referred to as the Association)

2. Sometime in the fall of 2014, the Grievant testified he began looking into possibility of a master's degree program. The Master of Educational Leadership program the Grievant was interested in was comprised of ten classes: Educational Issues, Educational Research and Applications, Leadership in Education, Legal and Ethical Issues in Education, Curriculum and Instruction, Supervision and improvement of Instruction, Human Resources and Diversity, Financial Resources, Educational Policy and Administration, and Conducting Research and Completing the Capstone. (Un. Ex. 2.)

3. Sometime in the Fall of 2014 the Grievant requested of Superintendent Todd Cameron (here in after referred to as the Superintendent) permission to enter the Masters Level Educational Leadership Program for a master's degree.

4. On December 4, 2014 the Grievant was denied acceptance into the Masters Level Educational Leadership Program by the Superintendent. The Superintendent informed the Grievant a Masters of Educational Leadership was not germane to the Grievant's teaching assignment. (Jt. Ex. 2)

5. On January 8, 2015 the issue was revisited by the parties and again denied by the Employer on January 12, 2015. (Un. Ex. 1)

6. On January 16, 2015 the Grievant filed a grievance and requested, "Based on course content and past practice acceptance of similar programs in similar situations, Mr. Maass believes that the Masters Level Program in Educational Leadership is germane to his teaching assignment and should be accepted for lane advancement on the salary schedule in its entirety.

7. On January 19, 2015 the Employer rejected the grievance. The Employer added it had rejected the Grievant's claim of a past practice due to the hiring of a new employee who had a Masters in Educational Leadership prior to her employment. (Jt. Ex. 3)

8. On January 21, 2015 the Grievant appealed to level II of the grievance procedure. (Jt. Ex. 4)

9. On February 4, 2015 the Superintendent rejected the Grievant's level II appeal. (Jt. Ex. 5)

10. On February 9, 2014 the Grievant appealed his grievance to the School Board (here in after referred to as the Employer). (Jt. Ex. 6)

11. On February 12, 2015 the Employer rejected the Grievant's level III appeal. (Jt. Ex. 7)

12. On February 23, 2015 the Association gave notice to the Employer the Association was requesting Arbitration. (Jt. Ex. 8)

13. On March 2, 2015 the Association requested a list of arbitrators from the Bureau of Mediation, State of Minnesota. (Jt. Ex. 9

14. On March 20, 2015 the Association Representative informed the Arbitrator he had been selected and requested dates for a hearing.

15. The Parties set the date for the hearing for May 18, 2015 in Grand Marais, MN.

## I. THE ISSUE

Did Independent School District No. 914 violate Article VI, Sections 3, Article XIV, and Article XVI of the parties' collective bargaining agreement and a binding past practice when it denied the Grievant's request for a Masters of Arts in Education in Educational Leadership to count for lane advancement on the salary schedule and if so, what is the remedy?

## II. RELEVANT CONTRACT PROVISIONS AND GOVERNING RULES

### 1. ARTICLE VI - BASIC SCHEDULES AND RATES OF PAY

SECTION 3: Placement on Salary Schedule: The following rules shall be applicable in determining placement of a teacher on the appropriate salary schedule:

Subd. 1. Germane: Credits to be considered for application on any lane of the salary schedule must be germane to the teaching assignment as determined by the School Board.

Subd. 2. Grade and Credits: To apply on the salary schedule, all credits beyond the bachelor's degree must carry a grade equivalent of "B" or higher.

Subd. 3. Prior Approval: All credits, in order to be considered for application on the salary schedule, must be approved by the Superintendent, in writing, prior to the taking of the course.

Subd. 4. Effective Date: Individual teaching contracts will be modified to reflect qualified lane changes twice every year; once on September 15 and once on January 15, providing a transcript of qualified credits in submitted to the Superintendent's office no later than 15 days prior to the dates specified in this Subdivision 4.

Subd. 5. Advance Degree Program: A teacher shall be paid on the master's degree lane or higher degree lane only if the degree program is germane to the teacher's assignment as approved by the School Board and the degree program is approved in writing by the superintendent in advance.

Subd. 6. Payment of Present Salary: The rules contained herein relating to the application of credits on the salary schedule shall not deprive any teacher of any salary schedule placement already recognized and actually being paid for the 2001-2002 and 2002-2003 school years.

**2. ARTICLE XIII – GRIEVANCE PROCEDURE**

Subd. 8 Jurisdiction. The arbitrator shall have jurisdiction over disputed or disagreements relating to grievance properly before the arbitrator pursuant to the terms procedure. The jurisdiction of the arbitrator shall not extend to proposed changes in terms and conditions of employment as defined herein and contained in this written Agreement, nor shall an arbitrator have jurisdiction over any grievance which has not been submitted to arbitration procedure as outlined herein, nor shall the jurisdiction of arbitrator extend to matters of inherent managerial policy, which shall include, but are not limited to, such areas of discretion or policy as the function and programs of the School District, its overall budget, utilization of technology, the organizational structure, and selection and direction and number of personnel. In considering any issue in dispute in his/her order the arbitrator shall give due consideration to the statutory rights and obligation of the School Board to efficiently manage and conduct it operation within the legal limitations surrounding the financing of such operation.

**3. ARTICLE XIV – DURATION**

SECTION 2. Effect: This Agreement constitutes the full and complete Agreement between the School Board and the exclusive representative. The provision herein relating to terms and conditions of employment supersede any and all prior Agreements, resolutions, practices and School District policies and all prior Agreements, resolutions practices, and School District policies, rules, or regulation concerning terms and condition of employment inconsistent with these provisions.

## 4. ARTICLE XVI - MAINTENANCE OF STANDARDS

All conditions of employment including teaching hours, extra compensation for duties outside regular reaching hours, relief periods, leaves and general teaching conditions shall be maintained at not less than the highest minimum standards in effect in the School District at the time this Agreement is signed, provided that such conditions shall be improved for the benefit of teachers as required by the express provisions of this Agreement. This Agreement shall not be interpreted or applied to deprive teachers of professional advantages heretofore enjoyed unless expressly stated herein. This Agreement shall constitute the full, complete commitments between both parties and may be altered, changed, added to, deleted from, or modified only through the voluntary, mutual consent of the parties in written signed amendment to this Agreement. Any individual Agreement between the School District and an individual teacher shall be subject to and consistent with the terms and conditions of this Agreement. If an individual contract contains any language inconsistent with the Agreement, this Agreement, during its duration, shall be controlling. The School District shall not solicit execution of any individual agreement as such time or in such manner as shall constitute an unfair labor practice under the P.E.L.R.A. This Agreement shall supersede any rules, regulations, or practices of the School District which shall be contrary to or inconsistent with its terms. The provisions of this Agreement shall be

incorporated into and be considered part of the established policies of the School District. All teachers under this contract who participate in the production of tapes, publications, or other produced educational material shall retain residual rights should they be copy written or sold by the School District.

## III. ISSUES

**A.** Was there a valid Past Practice?

### 1. EMPLOYER'S POSITION

The District does not agree with the Union's position that a past practice has been established when over 15 years only one employed teacher had a prior lane change approved for an Educational Leadership Program. Ms. Anderson had already completed her Administrative Program with an emphasis in Athletic Administration prior to being hired. Her situation is not relevant to this grievance.

Certainly granting an application of administrative credits for a lane change for one teacher over 15 years does not constitute a past practice. The District supports and encourages teachers to earn credits for lane change that are "germane" to their teaching assignment and will benefit students in the classroom.

### 2. UNION'S POSITION

The Master Contract is silent regarding the definition of the phrase "germane to the teacher's assignment." When this occurs, the arbitrator should look to the past practice between the parties to clarify the contract language and give specific meaning to it. A

"past practice" arises from a pattern of conduct that is clear, consistent, long-lived, and mutually accepted by the parties. Richard Mittenthal, *Past Practice and the Administration of the Agreement*, 59 Mich. L. Rev. 1017 (1961). A practice that comports with these factors generally is binding on the parties and enforceable under contract grievance procedures. *See* F. Elkouri & E. Elkouri, HOW ARBITRATION WORKS 623-26 (6th ed. 2003).

It is undisputed that the parties have a clear, consistent, long-lived, and mutually accepted practice of treating Master's Degree Programs in Education Leadership as germane to a teaching assignment and therefore eligible for lane advancement on the salary schedule. The data provided by the School District in response to the Union's data request showed that in the past fifteen years, not a single course or advanced degree program had been denied approval for lane advancement on the salary schedule. Even more relevant to this case is the fact that two Master's Degrees in Education Leadership, the very degree for which Mr. Maass sought approval, had been granted approval for lane advancement.

In addition to the approval for the Master's Degree programs in Educational Leadership, the School District has approved a number of other master's degree programs for lane advancement on the salary schedule. A Master's Degree program in Educational Technology was approved as germane to a Health/Physical Education teaching assignment. (Un. Exs. 3, 4.) A Master's Degree program in Differentiated Instruction was approved as germane to Kindergarten and Elementary teaching assignments. (Un. Exs. 3, 4.) A Master's Degree program in Mathematics was approved as germane to a Math teaching assignment. (Un. Exs. 3,

4.) A Master's Degree program in Reading was approved as germane to an English teaching assignment. (Un. Exs. 3, 4.) A Master's Degree program in Guidance Counseling was approved as germane to a Family and Consumer Science (FACS) teaching assignment. (Un. Exs. 3, 4.)

The School District has clearly and consistently determined that a Master's Degree in Educational Leadership is germane to a teaching assignment. In fact, the School District's decisions over the past fifteen years have established an even broader germaneness standard. As such, the parties have established a binding past practice that clarifies any ambiguity that may exist in the relevant language as applied to this grievance. When a practice clarifies ambiguity in an agreement, the practice is essential to an understanding of the ambiguous provision, and it becomes a part of that provision. In those situations, the practice will be binding for the life of the agreement, unless the language is changed. Richard Mittenthal, *Past Practice and the Administration of the Agreement*, 59 Mich. L. Rev. 1017, 1041 (1961) (emphasis added).

Because the past practice established by the parties works to clarify ambiguity of the phrase "germane to the teacher's assignment" in the Master Contract, simple repudiation or change on the part of the School District is not significant. As such, the School District violated the contract when it denied approval of the Masters of Arts in Education in Educational Leadership for lane advancement on the salary schedule.

## 3. DISCUSSION

It is well recognized the foundation for any arbitration award must, draw its essence from the collective bargaining agreement (here in after referred to as the CBA). The Arbitrator is further constrained by language in Article XIII GRIEVANCE PROCEDURE which states, "The jurisdiction of the arbitrator shall not extend to proposed changes in terms and conditions of employment as defined herein and contained in this written Agreement, nor shall an arbitrator have jurisdiction over any grievance which has not been submitted to arbitration procedure as outlined herein, nor shall the jurisdiction of arbitrator extend to matters of inherent managerial policy, which shall include, but are not limited to, such areas of discretion or policy as the function and programs of the School District, its overall budget, utilization of technology, the organizational structure, and selection and direction and number of personnel."

The Arbitrator is further constrained by language in Article - XIV – DURATION SECTION 2. when it states, "This Agreement constitutes the full and complete Agreement between the School Board and the exclusive representative. The provision herein relating to terms and conditions of employment supersede any and all prior Agreements, resolutions, practices and School District policies and all prior Agreements, resolutions practices, and School District policies, rules, or regulation concerning terms and condition of employment inconsistent with these provisions." For the Arbitrator to make a ruling in favor of the Association based on past practice the burden of proof falls to the Association.

For any claim of past practice to succeed in lieu of clear and concise language the past practice must pass the all of the five standards of a valid past practice which is recognized by most if

not all arbitrators and the courts. If anyone of the standards is not met a valid past practice does not exist.

The tests for a valid past practice are:

1. *Has existed for a reasonably long time*. The longer a practice has been in effect, the more weight it carries. Many arbitrators think that a practice must be three to five years old and must have been in practice during at least two contracts.

2. *Occurs repeatedly*, the more times the better. An exception might occur around a holiday. If every year for seven years management allows workers to go home early Christmas Eve, this could be a valid past practice.

3. *Is clear and consistent*, repeated the same way each time. If there are minor deviations, there must be at least a predominant pattern of consistency. An example: Management has always let workers accept personal phone calls. The union can document 100 times in the last five years. Management points out three occasions where workers were refused the right. The overwhelming pattern favors the union.

4. *Must be known to both management and union*. While a past practice does not have to be "negotiated," it must be something that both parties know about. Sometimes it's not good enough for a low-level foreman to know; it must be higher management. For instance: Workers have been leaving work a little early on Fridays for years. According

to the absentee program, they should receive one point, but the foreman never gives points for Friday. Upper management finds out and decides to give everybody warnings. Management did not inform the union that it wanted to change the practice. However, since upper management did not know about this practice, it would be hard to argue that workers could continue to leave work early every Friday.

*5. Must be accepted by both management and union*. Often the fact that a practice occurs frequently over a long period of time indicates that the parties agree to it. A practice that is openly agreed to by both parties gains past practice status quicker than one that is not openly accepted.[1]

The Associations makes the argument the practice of allowing lane changes for a Masters in Educational Leadership in the Educational Leadership Program goes back to May 12 of 2006. The Association sites two instances, Ms. Connie Lunde and Ms. Kelly Anderson. While the Association does address the duration of the practice as being approximately seven years it provides only two instances where lane changes have occurred in like or similar circumstance to that of the Grievant.

One of those instances, Ms. Anderson's, is significantly enough different from the Grievant's circumstance, in the opinion of the Arbitrator, to not qualify in establishing a pattern. While Ms. Anderson did receive full lane pay for her master's degree Ms. Anderson's degree was obtained prior to her employment and it is

[1] http://www.labornotes.org/2008/12/understanding-and-defending-past-practices#sthash.rcH8Nc7Z.dpuf

not known if the Employer would or would not have approved her credits for lane changes had she been working on her degree at the time of her employment.

The other case involved Ms. Lunde who testified she was originally denied access to the Educational Leadership Program by a previous administration of the Employers. Ms. Lunde stated she later convinced the then Superintendent to allow her to enter the Educational Leadership Program for lane changes. There was no evidence and little testimony as why the then Superintendent changed his mind so as to compare it to the present case. Ms. Lunde's testimony as to when and how she actually received the lane changes was very limited, but she did testify she did receive the full lane change when she received her master's degree.

In both of the above cases a long period of time has elapsed without any other like or similar cases occurring that could show a continued pattern. In the other cases where the Employer allowed teachers to enter the Education Leadership Program the Association provided no evidence that in each of those cases the master's selected were not germane to the respective teaching assignments. The Employer acted to approve those programs because the programs were germane. Therefore no past practice exist that would deny the Employer the right to reject a future request the Employer did not believe was germane to the teaching assignment.

The Association has failed to show a clear and consistent pattern in lieu of clear and concise language in the CBA.

The CBA is repetitive with references as to who has the unilateral right to approve entrance into the Educational Leadership Program. The Association provided no evidence it had discussions in any case prior which would have amended any of the following CBA language.

> Subd. 1. Germane: Credits to be considered for application on any lane of the salary schedule **must be germane to the teaching assignment as determined by the School Board**. (Emphasis added)
>
> Subd. 3. Prior Approval: All credits, in order to be considered for application on the salary schedule, **must be approved by the Superintendent, in writing**, prior to the taking of the course. (Emphasis added)
> Subd. 5. Advance Degree Program: A teacher shall be paid on the master's degree lane or higher degree lane **only if the degree program is germane to the teacher's assignment as approved by the School Board and the degree program is approved in writing by the superintendent** in advance. (Emphasis added)
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> Subd. 5. Advance Degree Program: A teacher shall be paid on the master's degree lane or higher degree lane **only** if the degree program **is germane to the teacher's assignment as approved by the School Board and the degree program is approved in writing by the superintendent** in advance.

The Superintendent testified the Employer was unaware that it had created a past practice or that it had negotiated any changes to the CBA giving up any managerial right to approve entrance into the Educational Leadership Program.

In the case of **Ramsey County v. AFSCME, Council 91, Local 8, 309 N.W.2d 785 (1981)** the Minnesota Supreme Court ruled for the Union in a past practice grievance when the Arbitrator's decision found a valid past practice which was not limited by a "broad no additions or modifications clause." The Court further stated, "In light of our decision, it is apparent that the broad "no additions or modifications" clause contained in the written agreement does not prevent enforcement of the award. The arbitrator in the case at bar did not change the contractual language solely on the basis of his own personal, extra contractual judgment. Rather he looked to the mutual intent of the parties as evidenced by their bargaining history and past practice."[2]

This Arbitrator is bound by clear and concise language in the CBA and finds no valid past practice based on a single case where an individual was allowed into the Educational Leadership Program after a successful appeal to the Employer.

[2] http://law.justia.com/cases/minnesota/supreme-court/1981/51227-2.html

B. Germane

**1. EMPLOYER'S POSITION**

According to the Teacher's "Master Agreement" the following rule applies when the School Board considers Credits on any lane change:

*SECTION 3. Placement on Salary Schedule: The following rules shall be applicable in determining placement of a teacher on the appropriate salary schedule:*

*Subd. 1, Germane: Credits to be considered for application on any lane of the salary schedule must be germane to the teaching assignment as determined by the School Board.*

Mr. Brett Maass's current teaching assignment is a high school Math Teacher for students in grades 7-12 at the Ulen-Hitterdal Public School. The Educational Leadership program is an educational administrative program which is not "germane" to Mr. Maass's teaching assignment. In fact, this administrative program is designed for teachers who are considering a career change from teaching to administration. The purpose of an administrative program is to prepare teachers for becoming a licensed school administrator. The courses and the training received in an administrative program are not centered on the instructional improvement of teachers or on the current teaching assignment as determined by the School Board. Ulen-Hitterdal is a small rural school district, and like all other school districts, has a need for high school teachers to earn a Master's Degree in the subject area(s) of their teaching assignment, which allows them to teach college level courses to high school students and command a

deeper knowledge of their subject areas. The argument presented by Mr. Maass that an administrative program or administrative courses will help him be a better teacher has no merit or direct impact on student learning or achievement. Administrative courses do provide enrichment in school finance, teacher evaluation, policy administration, and personnel administration, etc. They do not have a correlation to classroom practices and, thus, are not "germane" to Mr. Maass's teaching assignment.

**2. UNION'S POSITION**

In order for a teacher to be paid on the master's degree lane on the salary schedule, the usual and ordinary definition of terms as defined by a reliable dictionary. F. Elkouri & E. Elkouri, HOW ARBITRATION WORKS 450-51 (6th Ed. 2003). Germane is defined in Black's Law Dictionary as "Relevant; pertinent." 304 (Second Pocket Edition 2001).

The School District seemed to assert that the Educational Leadership program could not be germane to Mr. Maass' teaching assignment because the program is commonly used as a first step towards an administrative license. The fact that some people who obtain a Master's Degree in Educational Leadership go on to obtain an administrative license, in and of itself, does not support the conclusion that the program is not germane to a teaching assignment. To the contrary, the knowledge and skills necessary to be an effective school administrator are also relevant to being an effective teacher. This is evidenced by the fact that most school administrators are former teachers. The Master's Degree in Educational Leadership is germane to Mr. Maass have changed." Interestingly, the change Superintendent Cameron referred to was not the relevancy or applicability of the Educational Leadership

program to a teaching assignment, but rather the willingness of the school district to grant advanced degree programs for lane advancement. Superintendent Cameron suggested that the germaneness standard was being narrowed by the School District to Master's Degree programs within a teacher's assigned content area so that the teacher could teach college level courses. The School District's unilateral attempt at narrowing the germaneness standard in the contract should be rejected by the Arbitrator. In light of the advanced degree programs that have been approved over the past fifteen years for lane advancement on the salary schedule, the School District is unable to provide a reasonable justification for denying Mr. Maass' request. Mr. Maass' teaching assignment and should be approved for lane advancement on the salary schedule.

The contractual requirement that an advanced degree program be "germane to the teacher's assignment" is a constraint on the School District's discretion to deny an advanced degree program for lane advancement on the salary schedule. If a program is germane to the teacher's assignment, it must be approved. Conversely, if the program is not germane, it can be denied. It is common for teacher collective bargaining agreements to require that advanced degree programs and credits be "germane" to a teaching assignment before they can be used for lane advancement on a salary schedule. As such, the term "germane" has been the topic of many arbitration decisions.

Arbitrators have determined again and again that a School District's discretion is constrained by the germaneness standard and that School Districts cannot be arbitrary in the application of that standard. On a number of occasions, arbitrators have used the

germaneness standard to reverse a School District's decision to deny courses and programs for lane advancement. See In the Matter of Arbitration Between Cass Lake Education Association and Indep. Sch. Dist. No. 115, 82-PP-191-B (1982) (holding that the grievant was entitled to approval of a "Supervision of Student Teachers" course and three credits towards lane advancement because the course was germane to the teaching assignment of the grievant, as was evidenced by a past practice of approving similar courses for lane advancement); In the Matter of Arbitration Between St. Michael-Albertville Pub. Sch. Indep. Sch. Dist. No. 885 and St. Michael-Albertville Fed'n of Teachers, 92-PA-1902 (1992) (holding that the district violated the contract when it denied lane change credit for two courses entitled "Assertive Discipline & Beyond" and "How To Get Parents On Your Side" because the courses were germane to the teachers' assignments); In the Matter of Arbitration Between Onamia Educ. Ass'n and Indep. Sch. Dist. No. 480, 00-PA-426 (2000) (holding that an "Advanced Research Writing" course was germane to early childhood special education teacher's assignment).

Arbitrators have also used the germaneness standard to uphold a School District's decision to deny requests that courses and programs be used for lane advancement when the courses or programs are clearly unrelated to a teaching assignment. See In the Matter of Arbitration Between The East Grand Forks Educ. Ass'n and Indep. Sch. Dist. No. 595, 05-PA-1093 (2005) (concluding that the courses "Teaching Beginning Golf" and "Teaching Intermediate Golf" were not germane to a music teacher assignment); In the Matter of Arbitration Between Mounds View Educ. Ass'n and Indep. Sch. Dist. No. 621, 85-PP-130-B (1985) (holding that a teacher who attained a law degree while teaching

did not qualify for Ph.D. lane change because she failed to show relevancy to her assignment as an elementary teacher). When you compare the current grievance to these prior arbitration decisions, it is clear that an Educational Leadership program for a Math teacher is not akin to a golf course for a music teacher or a law degree for an elementary teacher. As articulated by Mr. Maass, the Educational Leadership program is directly relevant and applicable to his day to day interactions with students and instruction and is therefore germane to his teaching assignment.

The School District may argue that it has complete discretion to approve or deny advanced degree programs. This interpretation of the relevant contract language would render the phrase "germane to the teacher's assignment" meaningless. It is a well-settled canon of contract interpretation "that an interpretation that tends to nullify or render meaningless any part of the contract should be avoided because of the general presumption that the parties do not carefully write into a solemnly negotiated agreement words intended to have no effect." F. Elkouri & E. Elkouri, HOW ARBITRATION WORKS 464 (6th Ed. 2003) (quoting John Deere Tractor Co., 5 LA 631, 632 (Updegraff, 1946)).The only way to give meaning to the negotiated germaneness language is to apply it as a constraint on the School District's discretion.

The most persuasive evidence that the School District's decision was arbitrary is that it had approved Educational Leadership programs for lane advancement on two prior occasions. During the hearing, the School District was unable to articulate why a Master's Degree in Educational Leadership was determined to be germane to Ms. Anderson and Ms. Lunde's Physical Education/Health assignments but not Mr. Maass' Math

assignment. The only explanation as to why Mr. Maass' request was denied when Educational Leadership programs had been approved in the past is that "things have changed."

## 3. DISCUSSION

The Association has taken the position the Employer is being arbitrary in determining what is "germane" when considering the Grievant's request for the Educational Leadership Program. The Association is therefore asking the Arbitrator to substitute his judgement for that of the Employers.

While the Arbitrator has in the past substituted his judgement for that of an employer he is reluctant to in this case. First, the Arbitrator refers to the language in the CBA sited in the previous discussion concerning past practice. To find for the Grievant in the face of such strong contract language wound need substantially strong testimony and evidence.

The Association presented two witnesses in addition to the Grievant. Ms. Lunde testified while most of her credits would have applied to her teaching assignment some would not. Ms. Anderson gave similar testimony. While the Grievant testified all of the credits would apply to his teaching assignment his testimony was biased in his own behalf and not as persuasive to the Arbitrator.

In addition the Grievant testified he had not proceeded towards the advanced degree on his own. This is important to the Arbitrator because in all of the cases cited by the Association the grievants in those cases had completed the course work and grieved. The

Superintendent testified the Employer was willing to approve some of the courses for lane changes for the Grievant, but that offer was rejected by the Grievant. If the Grievant had proceeded to get a Master's in Educational Leadership and been denied the Master's lane change it is likely this Arbitrator would have ruled similarly to other arbitrators cited by the Association based on the payments to Ms. Lunde and Ms. Anderson. As the Grievant did not proceed to the advanced degree it is a moot point and not in the purview of this Arbitrator due to language in the CBA.

The Arbitrator is persuaded more by the Superintendents testimony that things have changed with time. The Employer has changed what it will approve to meet the needs of the students and there by the needs of the School District. The schools are providing a higher level of education based on college accredited courses being taught in the classrooms in high school. To meet the standards needed for accreditation teachers must have master's degrees in their fields which speaks to the issue of "germaneness and arbitrariness." The Association used the following definition for germane. "Germane is defined in Black's Law Dictionary as "Relevant; pertinent." 304 (Second Pocket Edition 2001). While Ms. Lunde's Masters may have been relevant and pertinent in 2006 it may not be as relevant and pertinent today in teaching college level classes. The Employer's decision seems reasonable and well thought out. While in the past the Employer in one instance did allow an employee, after an appeal, to receive lane changes such actions today no longer meets the Employer's needs.

The Arbitrator, based on language in the CBA, cannot substitute his judgement for that of the Employers.

## 1. AWARD

The Grievance is denied in total.

Issued and ordered on this 25th day of July, 2015 from Duluth, Minnesota.

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Anthony R. Orman, Labor Arbitrator